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CASE MP/W-21927/A/AC 536

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11/13/01
Date

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

IN RE APPLICATION OF

Group Art Unit:

MICHAEL GERARD GALLAGHER ET AL

Examiner:

APPLICATION NO: 09/866,967

FILED: MAY 29, 2001

FOR: TREATMENT OF MINERAL MATERIALS

RECEIVED

MAY 01 2002

OFFICE OF PETITIONS

Assistant Commissioner for Patents

Washington, D.C. 20231

PETITION UNDER RULE 1.47(a)

Dear Sir:

Applicants request that the USPTO permit acceptance of application filed by the other inventors in the above-identified patent application on behalf of an inventor that refuses to sign a declaration and power of attorney.

The named inventors are Michael G. Gallagher, Hal. G. Smith, Steve Adkins, Anne Francis Hooley and Brian Dymond. All of the named inventors have signed the declaration and power of attorney, except for Hal Smith.

The Commissioner is authorized to charge the fee due under 37 CFR 1.17(h) and any other

The last known address of the non-signing inventor is:

6277 S. Mt. Vernon Drive

Murray, UT 84107

Smith joined Ciba and signed an Employment Agreement in October 1999 to work as an Alumina Specialist. The Agreement provided that, in consideration for his salary and other compensation paid for his services during employment, all inventions conceived or developed during his employment would be exclusively owned by Ciba. Smith further agreed to assist in Ciba's efforts to secure patents directed to such inventions and to execute any instruments necessary which Ciba may deem desirable in this or related applications.

The above-identified patent application contains subject matter that was prepared by Smith during the term of his employment and using Ciba's resources. Smith's work was done during his regular working hours. Smith worked at times with one or more other inventors to make further developments in the invention. Smith resigned his position with Ciba in March 2001. Smith participated in the preparation and drafting of the non-provisional patent application pending herein even though he had left Ciba's employment. A copy of the final application was provided to Smith in May 2001.

A declaration and power of attorney was sent to Smith's last known address in July and August 2001. Smith offered to sign the declaration and power of attorney if he received additional compensation for his work on the subject matter of this application. Various communications were exchanged to try and reach a settlement. These efforts were unsuccessful. Smith's claim for additional compensation was reviewed internally and denied. All offers for settlement were or had been withdrawn by that time. Smith contacted Applicants' representative on November 1, 2001 to say that he refused to sign the declaration and power of attorney. Smith stated that his reason for not signing the declaration and power of attorney was that he did not feel he had been fully compensated for his work.

Applicants submit that proof has been submitted that an inventor refuses to join in this application and has been provided with a copy of the application. The requisited facts and background are supported by an accompanying Declaration. Applicants further submit that a declaration has been submitted in response to a Notice of Missing Parts in which all of the named inventors, but for Smith, have signed. For these reasons, Applicants request that this petition under 37 CFR 1.47(a) be granted and the application be forwarded for prosecution on the merits.

Respectfully submitted,



David R. Crichton
Attorney for Applicants
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Encl.: Declaration

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